

FILED

IN THE UNITED STATES BANKRUPTCY COURT

2005 NOV -9 P 6:01

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

U.S. BANKRUPTCY COURT
AUGUSTA, GA

IN RE:)	Chapter 13 Case
)	Number <u>05-13977</u>
BARBARA T. CLAY)	
XXX-XX-3896)	
1046 Corbin Street)	
Thomson, Georgia 30824-7227)	
)	
Debtor)	
_____)	
)	
BARBARA T. CLAY)	
)	
Movant)	
)	
vs.)	
)	
BARNEE C. BAXTER,)	
CHAPTER 13 TRUSTEE)	
)	
Respondent)	

ORDER

By motion filed October 28, 2005 Barbara T. Clay the purported debtor in this Chapter 13 case seeks an extension to obtain credit counseling and budget analysis pursuant to 11 U.S.C. §109(h)(3). The motion is denied.

Title 11 United States Code §109(h)(1) provides:

Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless such individual has,

during the 180-day period preceding the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing, (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counsel and assisted such individual in performing a related budget analysis.

Subparagraph (3) provides in relevant part:

(A) Subject to subparagraph (B) the requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that -

(i) describes exigent circumstances that merit a waiver of the requirements of paragraph (1);

(ii) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services referred to in paragraph (1) during the five-day period beginning on the date on which the debtor made that request; and

(iii) is satisfactory to the court.

(B) With respect to a debtor, an exemption under subparagraph (A) shall cease to apply to that debtor on the date on which the debtor meets the requirements of paragraph (1), but in no case made the exemption apply to that debtor after the date that is 30 days after the debtor files a petition, except that the court, for cause, may order an additional 15 days.

The request for exemption recites exigent circumstances i.e. the imminent foreclosure on her residence. However, the certification fails to state that the debtor ever requested credit counseling services as required under §109(h) (3) (A) (ii).

The debtor having failed to allege compliance with §109(h)(3)(A) in order to obtain the exemption, the motion is ORDERED denied.

Further ORDERED debtor having failed to comply with the eligibility requirements of §109(h)(1); this individual is ineligible to be a debtor under Title 11 United States Code; this case is dismissed.



JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia

this 9th Day of November, 2005.